

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

**ARLYN J. EASTMAN,
Personal Representative of the Estate of
LINO LOWELL SPOTTED ELK, JR.**

Plaintiff,

V.

**COUNTY OF SHERIDAN,
LEVI MCKILLET and DOES 1-5,**

Defendants.

7:07CV5004

ORDER

This matter comes before the court on the defendants' Rule 12 Motion to Strike or Dismiss Plaintiff's Third Amended Complaint (Filing No. 59). The defendants filed a brief (Filing No. 60) in support of their motion. The plaintiff did not respond to the motion.

On July 16, 2007, the court granted the defendants' motion to strike and/or dismiss the plaintiff's complaint with regard to punitive damages sought against Sheridan County and its officers or deputies in their official capacities. **See** Filing No. 42 adopting Filing No. 38. Thereafter, the plaintiff filed a second amended complaint, then a third amended complaint. **See** Filing Nos. 43 and 58. The defendants contend the plaintiff continues to ignore the court's July 16, 2007 ruling by including claims against the named defendant in his official capacity and for punitive damages against the county. For these reasons, the defendants ask that the offending statements be stricken from the third amended complaint or that the complaint be dismissed due to the plaintiff's repeated failure to comply with the court's orders.

Pursuant to Federal Rule of Civil Procedure 12(f), the defendants' motion will be granted to the extent, the plaintiff shall file a fourth amended complaint in compliance with the court's previous orders dismissing legally insufficient matters. Accordingly,

IT IS ORDERED:

1. The defendants' Rule 12 Motion to Strike or Dismiss Plaintiff's Third Amended Complaint (Filing No. 59) is granted, in part, and denied, as described above.

2. The plaintiff shall have until **December 20, 2007**, to file a fourth amended complaint in compliance with the court's previous orders.

DATED this 6th day of December, 2007.

BY THE COURT:

s/ Thomas D. Thalken
United States Magistrate Judge